

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
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IN THE MATTER OF:
J. FREEMAN

Applicant

Jennifer Freeman
For the Application

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Case No. CU 16-15

Before: Lynn A. Robeson, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

TABLE OF CONTENTS

| | |
|--|-----------|
| I. STATEMENT OF THE CASE..... | 3 |
| II. FACTUAL BACKGROUND | 4 |
| A. The Subject Property | 4 |
| B. Surrounding Neighborhood | 4 |
| C. Proposed Use | 6 |
| 1. Site Plan and Operations | 6 |
| 2. Site Landscaping, Lighting and Signage | 7 |
| D. Environmental Issues..... | 11 |
| E. Community Response..... | 12 |
| III. FINDINGS OF FACT AND CONCLUSIONS OF LAW | 12 |
| A. Necessary Findings (Section 59-7.3.1.E)..... | 12 |
| B. Development Standards of the Zone (Article 59-4)..... | 18 |
| C. Use Standards Specific to an Equestrian Facility (Section 59-3.2.4.B)..... | 20 |
| D. General Development Standards (Article 59-6) | 24 |
| 1. Site Access | 24 |
| 2. Parking, Queuing and Loading | 24 |
| 3. Site Landscaping and Screening/Parking Lot Screening and Landscaping | 25 |

| | |
|--|-----------|
| 4. Outdoor Lighting | 26 |
| IV. Conclusion and Decision | 26 |

I. STATEMENT OF THE CASE

Filed on June 8, 2016, this application seeks approval of an equestrian facility for up to two horses for the personal use of Ms. Jennifer Freeman and her family. The Applicant lives on the property where the proposed barn will be located, at 14957 Sugarland Road, Poolesville, MD. The property is zoned R-200.

The Hearing Examiner noticed a public hearing on the application for September 12, 2016. Exhibit 20. Because Sugarland Road is designated an “Exceptional Rustic Road,” Planning Staff referred the application to the Rustic Roads Advisory Committee (RRAC). They submitted a letter indicating its support of the application on August 31, 2016. Exhibit 21. On July 28, 2016, the Applicant submitted a revised site plan to show the location of a new septic system she plans to install. Exhibits 18(a), 24, Attachment B.

Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued its report on September 3, 2016, which recommended approval subject to 8 conditions:

1. No more than four horses may be kept on the property.
2. All uses on the site must conform to the Conditional Use Site Plan that is approved by the Hearing Examiner.
3. All horses on site must belong to the owner(s) of the property.
4. The Applicant must not rent out any of the horses in the equestrian facility.
5. No equestrian events will be held on the property.
6. No identification sign may be placed on the property.
7. This Equestrian Facility Conditional Use approval must be renewed every five years.
8. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits necessary to occupy the Conditional Use premises and operate the Conditional Use as granted by the Hearing Examiner.

Exhibit 24.¹ Staff responded to technical questions from the Hearing Examiner and filed corrections to the Staff Report on September 9, 2016. Exhibits 25, 26. The public hearing

¹ The Planning Board did not review this application.

proceeded as scheduled on September 12, 2016, without opposition. At the public hearing, the Applicant adopted the findings and conclusions of the Staff Report as her own testimony and agreed to abide by all recommended conditions of approval. T. 4. The record was held open to receive the transcript. The record closed on September 22, 2016. For the reasons that follow, the Hearing Examiner approves the application with the conditions included in Part IV of this Report and Decision.

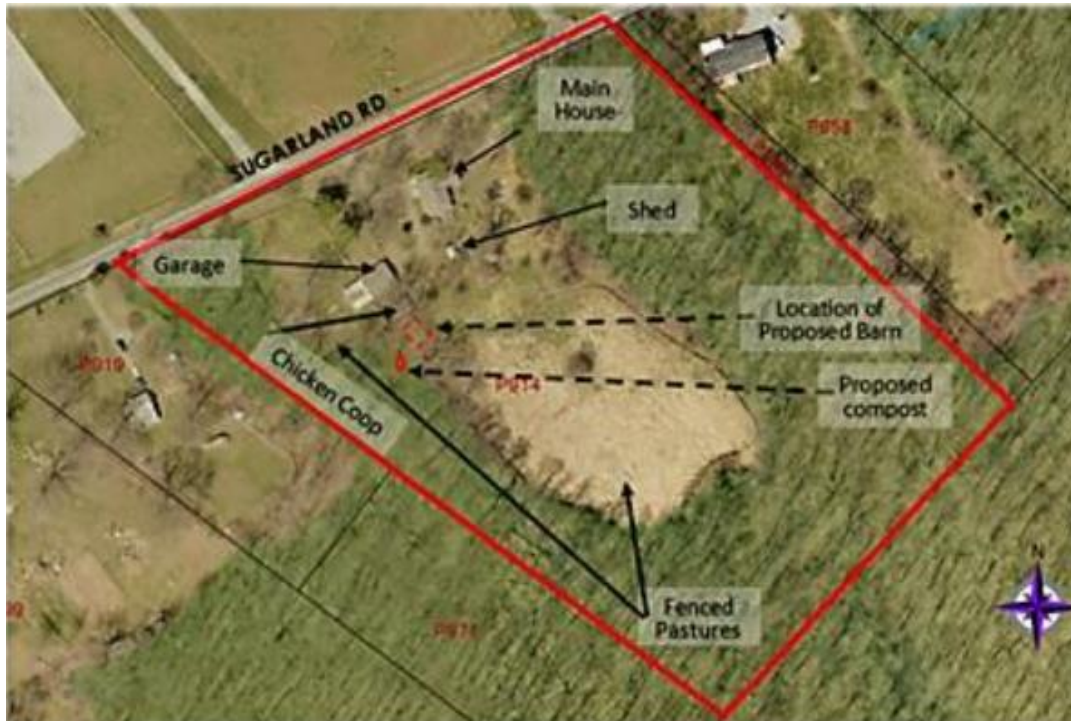
II. FACTUAL BACKGROUND

A. The Subject Property

The property consists of 7.65 acres identified as Parcel 914, Tax Map CS 61. It is located on Sugarland Road, approximately 1,160 feet east of Sugarland Lane and 1,800 feet west of Partnership Road. Exhibit 24, p. 1. According to Staff, the property is “trapezoidal” in shape. *Id.* at 3. Existing improvements include a one-story single-family home with a basement, a detached garage, a small chicken coop and a shed. A gravel driveway provides access from Sugarland Road. There are no sensitive environmental features on the property, which is surrounded on three sides by forest. *Id.* The property fronts on Sugarland Road, which is designated an “Exceptional Rustic Road” under the *1996 Rustic Roads Functional Master Plan* (Rustic Roads Plan.) Staff included an aerial photograph, shown on the following page, which shows the locations of both existing and proposed features of the site. *Id.* at 4.

B. Surrounding Neighborhood

The “surrounding neighborhood” (*i.e.*, the area that will be most directly impacted by the proposed use) is defined and characterized in a conditional use application to determine whether the use proposed is compatible with that character. Staff defined the boundaries of the surrounding

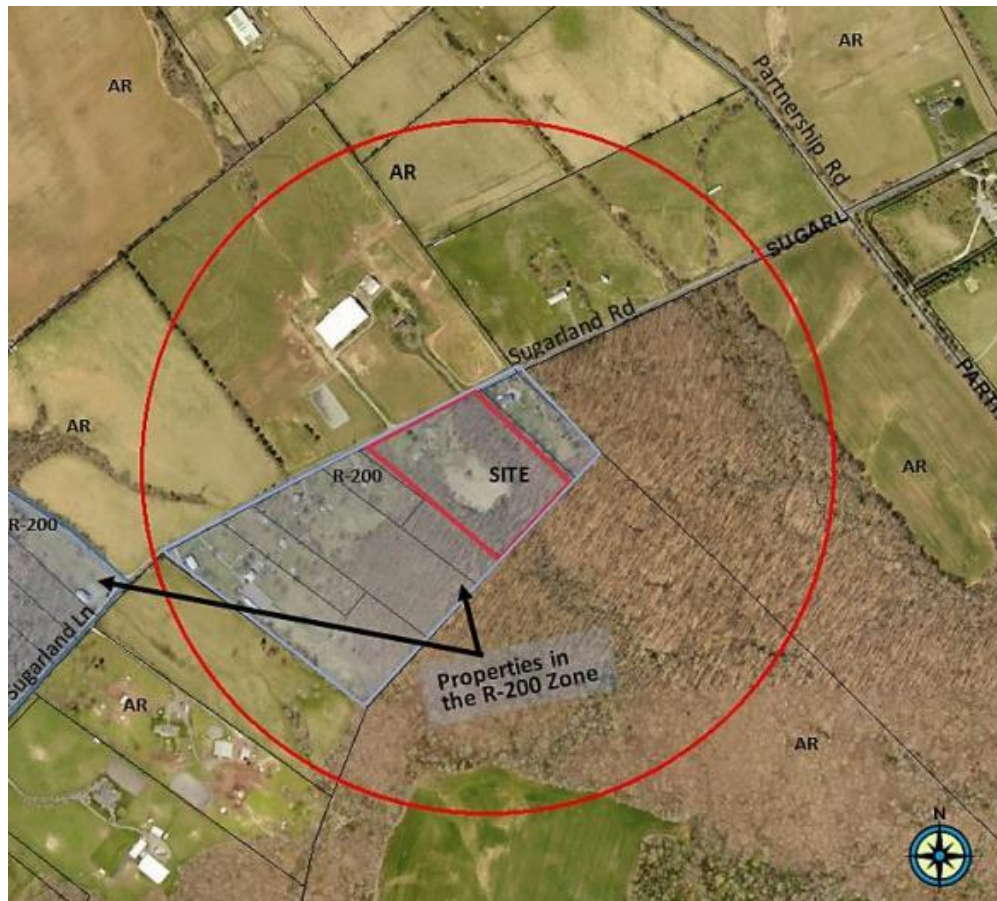


Aerial View of the Subject Property (Ex. 24, p. 4)

area as those properties within a 1,500-foot radius of the subject property. The boundaries are illustrated by an aerial photograph contained in the Staff Report (*Id.* at 5, shown on the following page.

Staff described the neighborhood as follows (*Id.* at 5):

The neighborhood (See Figure 3) is predominantly agricultural with single-family detached residential homes on large estate lots, farm houses and farms, and unimproved parcels, all in the AR and R-200 Zones. The Subject Property is within a small enclave of R-200 zoned area (Rural Communities-7 properties with a total area of approximately 28 acres). This enclave is surrounded by AR Zoned farm properties. The Property abuts residential properties to the east and west that are zoned R-200. To the south (rear) the Property abuts a 361-acre property that contains a vast areas of forest land, a number of streams and tributaries, and patches of farm areas, extending to further south to River Road. To the north, across Sugarland Road, and confronting the Subject Property, is a 57-acre farm in the AR zone. In addition to the seven R-200 zoned properties that the subject site is a part of, the neighborhood consists of portions of seven AR zoned farm properties of various sizes.



**Aerial View of Surrounding
Neighborhood (Ex. 24, p. 5)**

There are two conditional uses in the surrounding neighborhood: an animal boarding place approved in 1972, and a riding stable for three horses approved in 1972. The boarding place confronts the property across Sugarland Road. The riding stable is approximately 670 feet south of the property in the R-200 Zone. *Id.* at 16.

C. Proposed Use

1. Site Plan and Operations

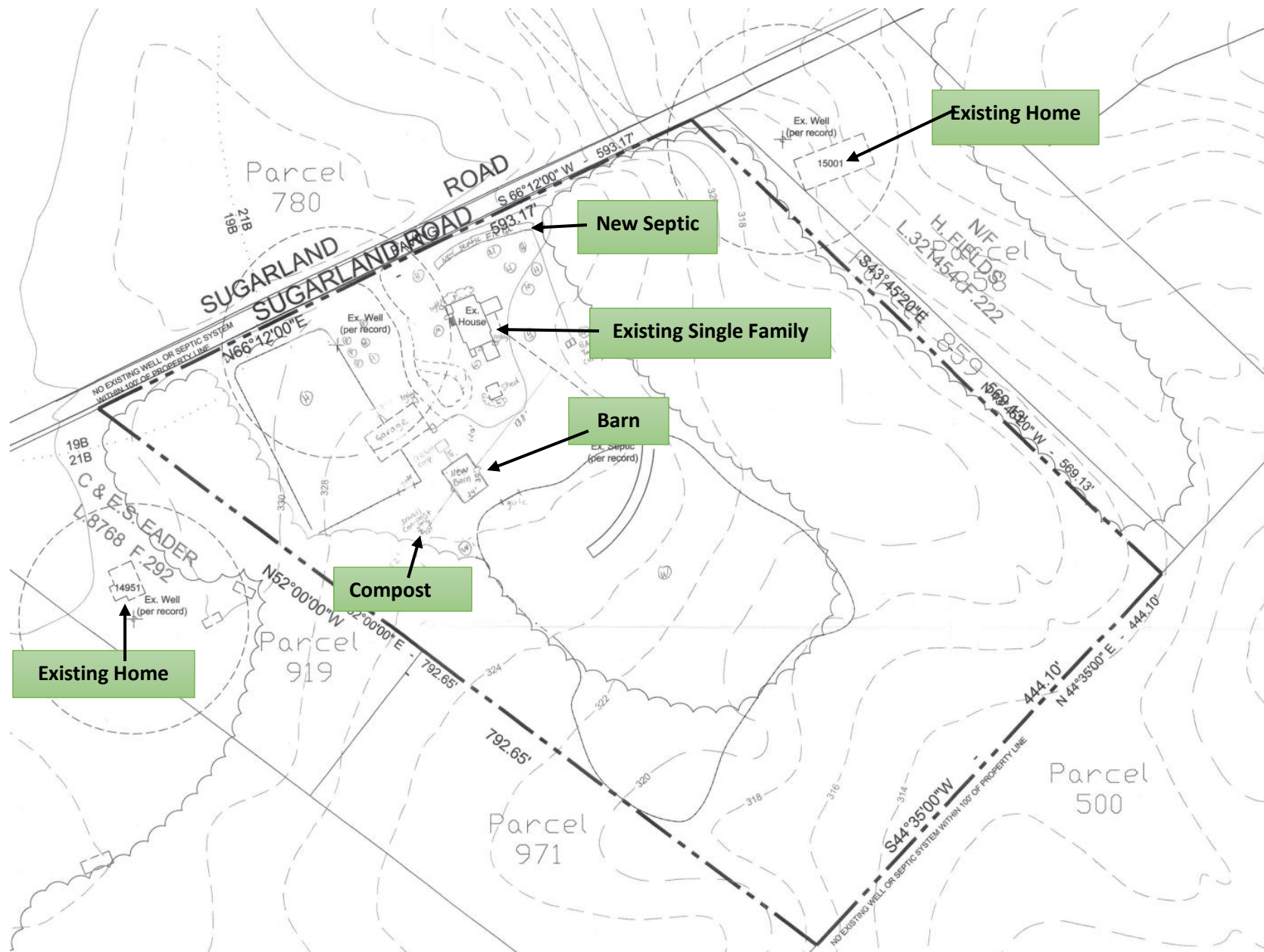
The Applicant seeks a conditional use to construct a barn to house two horses for her and her family's personal use. Because of the large size of the property, Staff recommended a condition permitting the Applicant to have up to four horses. *Id.* at 2. The proposed barn would

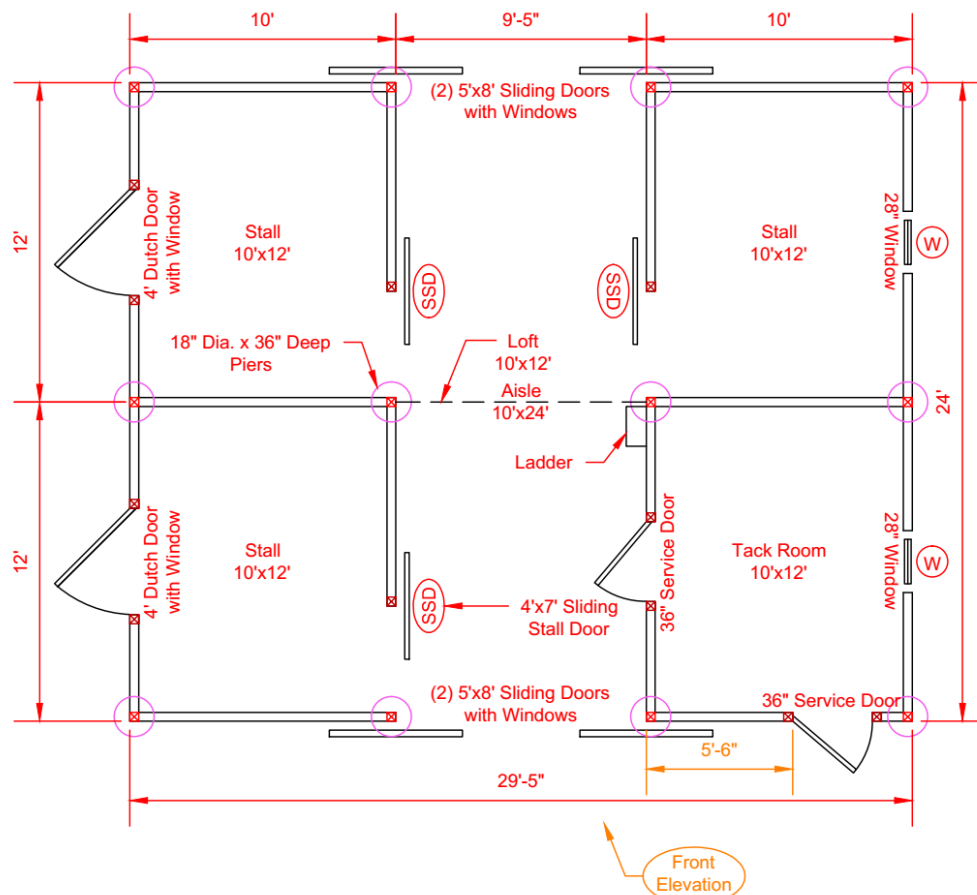
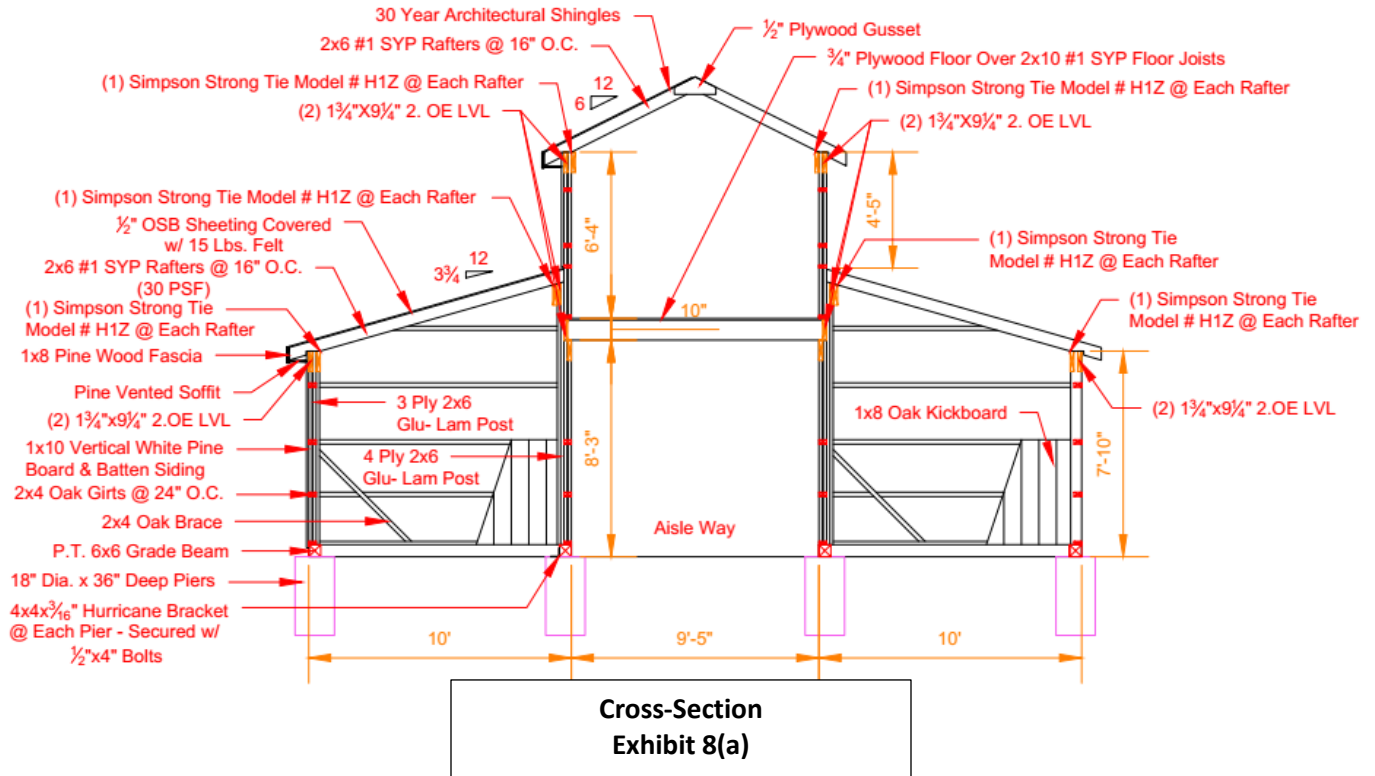
be located behind the existing single-family home and garage, approximately 152 feet from the western property line. The nearest adjacent dwelling (to the west) is set back further from the property line (i.e., more than 152 feet.). *Id.* at 5. The conditional use site plan (Exhibit 18(a)) is reproduced on the following page.

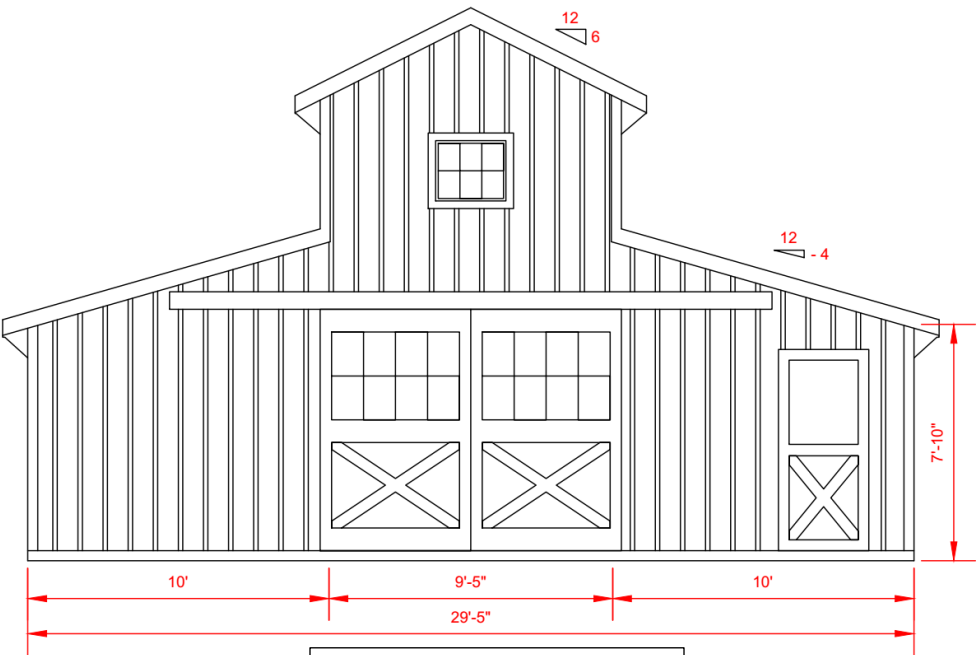
The Applicant proposes to board horses for her family's personal use only and does not propose to hold any equestrian events to which the public or other individuals are invited. The property has two pastures: a smaller pasture in the west side yard and a large pasture behind the existing improvements. A compost area will be located to the west of the barn. Compost will be used on the existing vegetable garden (northeast of the barn) and to maintain the pastures. *Id.* at p.6. At the hearing, Ms. Freeman testified that there is sufficient area to dispose of compost generated by four horses. According to Staff, there are seven existing parking spaces on the property, two in the garage and 5 in the gravel parking area. Staff advises that no additional parking spaces are required because the horses are for the family's personal use and will not generate any new traffic. *Id.* at 10. The proposed barn will be 720-square feet in two stories. It will be approximately 20-feet in height and will have three stalls and one tack room. Architectural drawings of the barn, submitted by the Applicant, are shown on pages 9-11 of this Decision.

2. Site Landscaping, Lighting and Signage

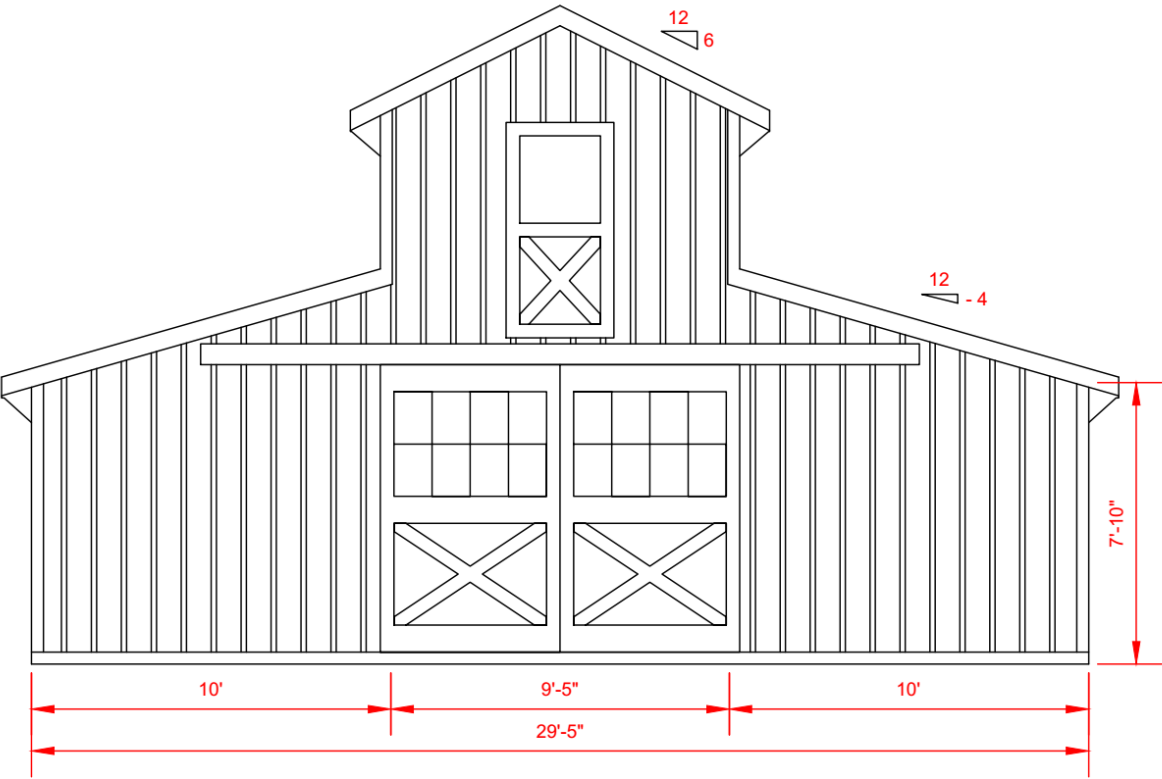
Currently, there are two sets of residential motion lights mounted on the rear wall of the residence, switch activated lights on either side of the main entrance, and two sets of LED motion activated lights on either side of the entrance to the garage. The Applicant does not propose to add any new exterior lighting. Interior lighting was be installed in the barn. *Id.* at 11. Because the facility will be for the family's personal use only, there will be no signage for the use.



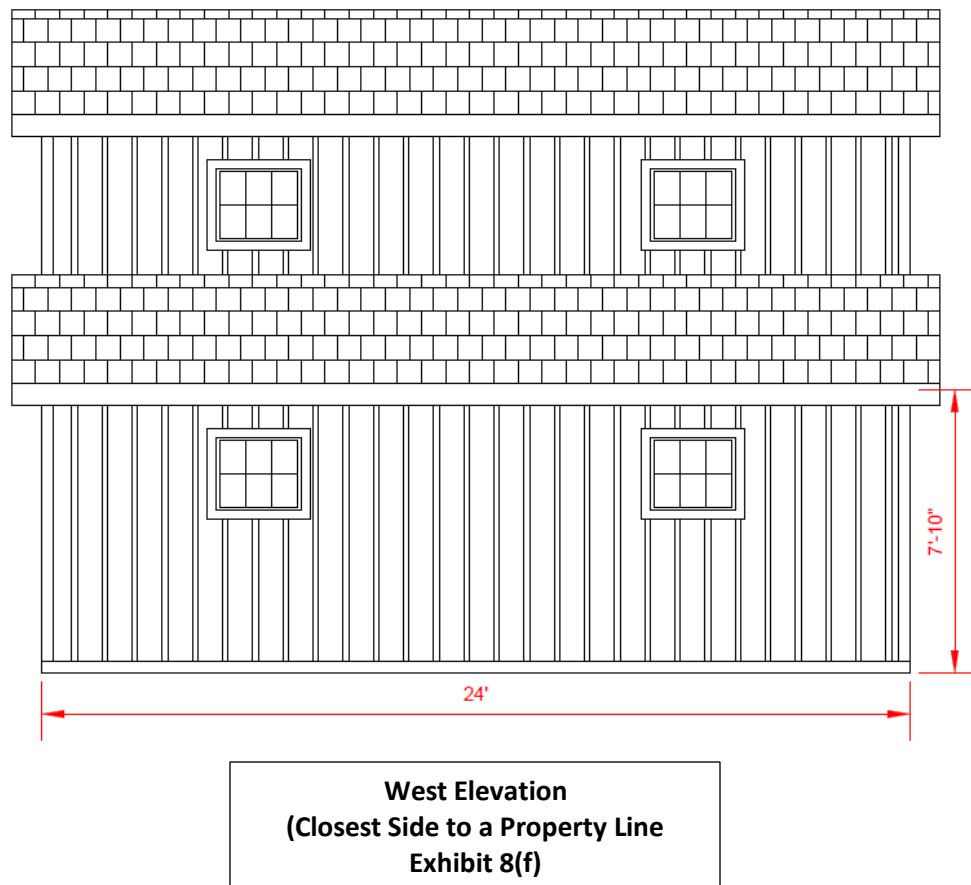




Front Elevation
Exhibit 8(c)



Rear Elevation
Exhibit 8(e)



The property is buffered on three sides by forest. Staff concluded that the forested screening “provides safe, and efficient screening of the proposed use from the adjacent residentially zoned properties...” *Id.* at 10. Because of the extensive forest, Staff recommended that the Hearing Examiner waive the additional landscaping requirements contained in Article 59-6 of the Zoning Ordinance. Staff determined that the additional landscaping is unnecessary to make the use compatible with adjacent properties. Exhibit 25.

D. Environmental Issues

Staff reports that there are no environmentally sensitive features (i.e., streams, wetlands, steep slopes, 100-year floodplains or highly erodible soils) on or adjacent to the property. *Id.* at 6. Because the use does not require any grading, it is exempt from the requirements of the County’s

Forest Conservation Law, Chapter 24A of the County Code and from the need to obtain a sediment control permit. According to Staff, “[T]here are no environmental issues or concerns associated with the proposed use.” *Id.* at 11.

E. Community Response

No communication, either in support or opposition, has been filed with the Planning Department or with the Hearing Examiner.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that it meets certain standards in the Zoning Ordinance. These pre-set standards are both specific to a particular type of use, (in Article 59-3 of the Zoning Ordinance) and general (*i.e.*, applicable to all conditional uses), as set forth in Division 59-7.3 of the Zoning Ordinance. The specific standards applied in this case are those for an equestrian facility, in Section 59-3.2.4.B, C.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (*Zoning Ordinance*, §59-7.1.1.), the Hearing Examiner concludes that the conditional use proposed in this application, with the conditions imposed in Part IV of this Report and Decision, would satisfy all of the specific and general requirements for the use.

A. Necessary Findings (Section 59-7.3.1.E)

The general findings necessary to approve a conditional use are found in Section 59-7.3.1.E. of the Zoning Ordinance. These standards, and the Hearing Examiner’s findings for each standard, are set forth below:

E. Necessary Findings

1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;

Conclusion: Staff advises that there is no previous approval that must be amended.

b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;

Conclusion: This subsection requires an analysis of the standards of the R-200 Zone contained in Article 59-4; the use standards for an equestrian facility contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively).

c. substantially conforms with the recommendations of the applicable master plan;

Conclusion: This property lies within the 1980 Functional Master Plan for the Preservation of Agriculture and Rural Open Space Area (Master Plan or Plan). It identifies several smaller sub-planning areas within the larger area covered by the Plan. This particular property is located in the “Poolesville & Vicinity (P.A. 17) sub-planning area. *Id.* at 8. The Plan’s major focus is to preserve contiguous areas of farmland. *Plan*, p. 30. It also recognized the need for some commercial and residential development to support the rural community. The Plan contemplated that the residential component would be fulfilled through existing rural communities in the R-200 Zone. *Id.* at pp. 35, 38. This property is part of the rural community identified as “Sugarland” in the Plan. Staff concluded that (*Id.* at 8):

The proposal to keep two horses for personal use and maintain approximately 5 acres of open area for pasture is consistent with the predominant agricultural and rural nature of the surrounding neighborhood and the unique nature of Sugarland as a Rural Community. The Subject Property is consistent with the Master Plan’s guideline for Rural Communities that encourages maintaining the existing scale of development and for new development to be consistent with the historical character and community lifestyles in rural settlements.

The property fronts on Sugarland Road, designated an “Exceptional Rustic Road” under the *1996 Rustic Road Functional Master Plan* (Rustic Road Plan), because of its natural features, historic value and vistas. *Rustic Road Plan*, p. 50. Staff referred this application to the RRAC, who supported the application for several reasons. First, the RRAC characterized the character and environment of the road as primarily agricultural with small houses and traditional agricultural buildings. The RRAC found that the proposed barn had a classic agricultural design that would be compatible with surrounding area. It also supported the application because the use would not generate additional traffic and no change to the entrance of the property is proposed. Exhibit 24, Attachment B. Planning Staff agreed, determining that, “the proposed use will not affect the nature of the Exceptional Rustic Road since it does not propose any changes to the access point and will not add any new traffic to the road.” *Id.* at 9.

The Hearing Examiner agrees with both Planning Staff and the RRAC that the buildings and use proposed are consistent with both the Master Plan and the Rustic Road Plan. The proposed use is deemed an “agricultural” use under the Zoning Ordinance, consistent with the character of the area. The barn is located behind the existing single-family home and screened on three sides by forest. There will be little additional activity and no road improvements generated by the use because the Applicant does not propose to have equestrian events. This standard has been met.

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

Conclusion: For the same reasons that the RRAC and Planning Staff found that the application conformed to the recommendations of both master plans, the Hearing Examiner concludes that it is harmonious with and will not alter the character of the surrounding area. Staff characterized the area as primarily agricultural, with an enclave of R-200 zoned properties and concluded (*Id.* at 16):

The proposed Conditional Use will not result in any notable negative impact on the residential neighborhood, in terms of increased traffic and noise. It has little or no impact on traffic and parking. The design, scale and bulk of the proposed barn and the intensity and character of activity associated with the proposed use are compatible with the surrounding low density rural/agricultural neighborhood. Many of the properties within the agricultural zoned farm properties and the R-200 zoned rural residential properties keep horses for personal uses.

There is a network of bridle trails within the larger surrounding area. The proposed use will be operated in such a manner that it will not interfere with the orderly use, development, and improvement of surrounding properties. With the exception of the proposed assemblage and placement of the new barn, the proposed use does not require additional construction or modification of existing improvements. Pasturing of animals has apparently been done on the Property in the past.

Based on this evidence, the Hearing Examiner finds that this standard has been met.

e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

Conclusion: Staff believed that the addition of this conditional use to the two other conditional uses, an animal boarding facility and a riding stable for 3 horses, will not affect the area adversely. Staff points out that the proposed use is agricultural, as is most of the neighborhood, and will have few external impacts (i.e., traffic, noise) because it will be for personal use only. The Hearing Examiner finds that the application meets this standard.

f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate

public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

Conclusion: Staff reports that the use does not require a preliminary plan because no building permit is required. *Id.* at 17. Thus, the Hearing Examiner must make the determination of whether there are adequate facilities to serve the use.

(a) Water and Sewer Service: The property is in Water Category W-6 and Sewer Category W-6, and therefore must operate on well and septic systems. The existing septic system is failing and the Applicant has received a permit from Montgomery County to upgrade the system. *Id.* at 18, Attachment B. Based on this evidence, the Hearing Examiner finds that water and sewer service is adequate for the use proposed.

(b) Local Area Transportation Review and Transportation Policy Area Review: Planning Staff advises that the application is exempt from Local Area Transportation Review because personal use of the stables will not generate more than 30 new trips. The property is located in the Rural West Policy Area, and is therefore exempt from Transportation Policy Area review. *Id.* at 18.

(c) Other Public Facilities: The Rockville Volunteer Fire Station is located approximately 9.7 miles, or 16 minutes, from the property. The closest police station is located in Gaithersburg approximately 10 miles east of the property. Staff states that both facilities are adequate to serve the use. A riding stable for personal use does not generate additional school-aged children and a

school facilities review is unnecessary. *Id.* The Hearing Examiner finds that public services and facilities will be adequate to serve the proposed use.

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §59-1.4.2. Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the harm caused by the adverse effects would be “undue.”

Generally, there are seven measures used to evaluate whether the physical and operational characteristic of a use are inherent or non-inherent to the use. These are size, scale, scope, lighting, noise, traffic and the environment. Staff identified five inherent operational characteristics associated with an equestrian facility in a residential zone: (1) a barn with interior lighting only, (2) a fenced paddock, (3) sight, odor, and sounds associated with horses, (4) a manure/compost

area, and (5) a single-family dwelling in which the owners of the horses live. Exhibit 24, p. 18. Because equestrian facilities may involve events to which individuals are invited (which is not the case here), the Hearing Examiner includes a sixth characteristic as traffic to be generated by the use.

Staff concluded that the scale and design of the barn and pastures are inherent to an equestrian facility in a residential area and “would not be unusual in any respect.” *Id.* at 19. Based on the size of the property, the Zoning Ordinance would permit up to seven horses on the property. This Decision approves slightly more than half that amount. In addition, the proposed use is agricultural in nature, consistent with the surrounding neighborhood. Because the facility will be for the private use of the owners, no additional traffic will be created by the use. The property is well screened with no new exterior lighting. In short, the direct impacts of the use will be minimal. The Hearing Examiner finds that there are no non-inherent characteristics associated with the equestrian facility as proposed that would disturb the peaceful enjoyment or economic value of nearby properties or the surrounding area.

2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

Conclusion: Zoning Ordinance §59-7.3.1.E.2 requires an examination of the compatibility of the use with the character of the residential neighborhood in which it is located. This question is similar to the one raised by Zoning Ordinance §59-7.3.1.E.1.d above, which asked whether the proposed use will be harmonious with the neighborhood or would alter its character. For the same reasons, the Hearing Examiner finds that this standard has been met.

B. Development Standards of the Zone (Article 59-4)

In order to approve a conditional use, the Hearing Examiner must find that the application

meets the development standards of the R-200 Zone, contained in Article 59-4 of the Zoning Ordinance. Staff provided a table summarizing compliance with the development standards of R-200 Zone (*Id.* at 10), shown below. In addition, Staff confirmed that the use is agricultural in nature. That means it is exempt from the requirement that accessory structures be no more than 50% of the size of the single-family dwelling or 600 square feet. *See*, §59-4.4.7.B.2.b. The R-200 Zone limits the height of accessory structures to 35 feet. Staff approximates the height of the barn at 20 feet. Ms. Freeman testified that she scaled the height at approximately 18 feet. T. 5. Based on this evidence, the Hearing Examiner finds that the application meets the development standards of the R-200 Zone.

Table 1: R-200 Zone Standard Method Development

| Current Development Standard: R-200 | Standard | Proposed |
|--|-----------|---------------------------------|
| Minimum Lot Area | 20,000 sf | 333,234 sf (7.65 ac) |
| Minimum Lot width: | | |
| • @ Front building line | 100 ft | 555 ft |
| • @ Street line | 25 ft | 572 ft |
| Minimum Building Setback -Principal Building | 40 ft | 55 ft |
| Front | | |
| Side | | |
| ▪ One side | 12 ft | +277 ft |
| ▪ Sum of both sides | 25 ft | +534 ft |
| ▪ Rear | 30 ft | +545 ft |
| Minimum Setback- Accessory Building (barn) | | |
| • From street line | 65 | +120 ft |
| • From Rear Lot line | 7 | +480 ft. |
| • From a side Lot line | 12 | +115 ft. |
| Maximum Building Height | 50 ft | <30 (1story +basement) |
| Maximum Building Coverage Including accessory building | 30% | +0.9 % (approximately 3,000 sf) |
| Minimum Parking | 2 | 6 |

C. Use Standards Specific to an Equestrian Facility (Section 59-3.2.4.B)

The specific use standards for approval of an equestrian facility are set out in Section 59-3.2.4.B. of the Zoning Ordinance, which are discussed below.

1. Where an Equestrian Facility is allowed as a limited use, it must satisfy the following standards:

- a. The minimum gross acreage per horse is as follows:***
 - i. for 1-2 horses, 2 acres;***
 - ii. for 3-10 horses, one acre per horse; and***
 - iii. for more than 10 horses, 10 acres plus an additional one-half acre for each horse over 10.***

Conclusion: The property consists of 7.65 acres. Staff recommended a condition limiting the number of horses to four because of the size of the property. The application as proposed and approved will meet the above requirement.

- b. In the RNC zone, a maximum of 5 horses is allowed.***

Conclusion: The property is zoned R-200. This standard is not applicable to this application.

- c. Any Equestrian Facility that keeps or boards more than 10 horses must meet all nutrient management, water quality, and soil conservation standards of the County and State. A nutrient management plan prepared by a qualified professional and a soil conservation and water quality plan prepared by the Montgomery Soil Conservation District Board must be submitted through a letter of certification by the landowner to DPS, or other relevant agency. Enforcement of the nutrient management, water quality, and soil conservation plans is the responsibility of the State of Maryland. The landowner must obtain all plans within one year after starting operations.***

Conclusion: The application requests permission to have only two horses, and a condition of approval caps the total number of horses to four. This standard does not apply to the application.

- d. Each building, show ring, paddock, outdoor arena, and manure storage area must be located at least 100 feet from any existing dwelling on an abutting property.***

Conclusion: The site plan demonstrates that the barn, pastures, and compost area are located far more than 100 feet from any dwelling on an abutting property, as confirmed by Planning Staff. All items are also more than 100 feet from the single-family home on the property. *Id.* at 13.

e. Amplified sound must satisfy Chapter 31B.

Conclusion: The use as proposed will not generate any amplified sound. Therefore, this standard is inapplicable.

f. Any outdoor arena lighting must direct light downward using full cutoff fixtures; producing any glare or direct light onto nearby properties is prohibited. Illumination is prohibited after 10:00 p.m. on Friday or Saturday, and after 9:00 p.m. on Sunday through Thursday.

Conclusion: The application does not propose any new outdoor lighting. Staff confirms that existing exterior lights face downward and do not produce any glare. *Id.* at 14.

g. Equestrian events are restricted as follows...

Conclusion: This standard contains restrictions on the number of visitors, participants and the timing of equestrian events dependent on the size of the property. The Applicant does not propose to have equestrian events and there is a condition of approval that would prohibit these. Therefore, these restrictions are not applicable to the use as proposed and conditioned.

h. A permit must be obtained from DPS for each event involving between 151 and 300 participants and spectators, per day. The applicant must specify the nature of the event, the anticipated attendance of spectators and participants, the number of days the event will take place, the hours during which the event will take place, the area to be used for parking, any traffic control measures intended to be put in place, and any other information determined by DPS to be relevant to the issuance of the permit. A fee for issuance of the permit may be set by DPS.

Conclusion: This requirement does not apply because the Applicant will have no equestrian events.

- i. An Equestrian Facility conditional use application may be filed with the Hearing Examiner to deviate from any limited use standard regarding: number of participants and spectators; number of events each year; event acreage; or hours of operation. An Equestrian Facility conditional use approval must be renewed every 5 years. Before the conditional use is renewed the Hearing Examiner must evaluate the effectiveness of the terms and conditions of the original approval.**

Conclusion: As no equestrian events will be permitted, the Hearing Examiner need not place restrictions on these events. However, Staff advises that the Applicant must apply to renew the conditional use every five years, which is a condition of approval of this application.

- 2. Where an Equestrian Facility is allowed as a conditional use, it may be permitted by the Hearing Examiner under all applicable limited use standards, Section 7.3.1, Conditional Use, and the following standards:**

- a. If the subject lot abuts property in the AR zone, screening under Division 6.5 is not required.**

Conclusion: The property abuts property in the R-200 Zone, so screening under Division 59-6.5 would normally be required. Nevertheless, Staff found that the existing forest on three sides sufficiently buffered the use from abutting properties. Staff recommended that the Hearing Examiner waive the requirement for additional landscaping under Section 59-7.3.1.E.1.b, as discussed in Part II.D.3, below.

- b. In the AR, R, RC, and RNC zones:**
 - i. The Equestrian Facility must not adversely affect abutting land uses or the surrounding road network.**
 - ii. In evaluating the compatibility of an Equestrian Facility on the surrounding land uses, the Hearing Examiner must consider that the impact of an agricultural use on surrounding land uses in an Agricultural or Rural Residential zone does not necessarily need to be controlled as stringently as the impact in a Residential zone.**

Conclusion: These standards are not applicable because the property is zoned R-200.

c. In the RE-2, RE-2C, RE-1, and R-200 zones:

- i. Any Equestrian Facility on less than 5 acres must establish through a pasture maintenance plan, feeding plan, and any other documentation the Hearing Examiner requires, that the site contains sufficient open pasture to ensure proper care of the horses and proper maintenance of the site.**

Conclusion: The property is 7.65 acres in size. Therefore, this requirement is not applicable. Even so, Staff concluded that the property contains sufficient open pasture to ensure the proper care of the horses and maintenance of the site. *Id.* at 15. Ms. Freeman testified that the compost will be deposited in a vegetable garden and in the pasture. There is sufficient area to distribute compost generated by four horses. T. 7.

ii. The Hearing Examiner may limit or regulate more stringently than limited use standards the following:

- (a) the number of horses that may be kept or boarded;**
- (b) the number of horses that may be rented out for recreational riding or instruction;**
- (c) the number and type of equestrian events that may be held in a one-year period; and**
- (d) the hours of operation of any equestrian event or activity.**

Conclusion: Based on Staff's recommendation and Ms. Freeman's testimony that the site is large enough to provide care and maintenance for four horses, the Hearing Examiner agrees with Staff that the facility may have a maximum of four horses. The Applicant does not propose to rent horses and this is a condition of approval. The Hearing Examiner need not restrict the remaining activities listed above because the equestrian events will be prohibited.

iii. The facility operator must satisfy the state requirements for nutrient management concerning animal waste.

Conclusion: The Applicant has agreed to comply with this requirement and this will be made a condition of approval of the application. *Id.* at 16.

D. General Development Standards (Article 59-6)

Article 59-6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. The requirements of these sections need to be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.” *Zoning Ordinance*, §59-7.3.1.E.1.b. The applicable requirements, and whether the use meets these requirements, are discussed below.

1. Site Access

Section 6.1.2. Applicability

Division 6.1 applies to development in the Residential Multi-Unit, Commercial/Residential, Employment, Industrial, and Floating zones if:

- A. an apartment, multi-use, or general building type is proposed; and*
- B. a site plan or conditional use approval is required.*

Conclusion: Zoning Ordinance Division 59-6.1 governs site access; however, it does not apply to development in single-family residential zones, such as the R-200 Zone.

2. Parking, Queuing and Loading

Parking, queuing and loading standards are governed by Division 59-6.2 of the Zoning Ordinance. Staff advises that no new parking spaces are required since the use as proposed will not generate any new traffic. The Hearing Examiner notes that the property has parking well in excess of the residential requirement (i.e., two spaces) and finds that existing number of spaces is ample to serve the use. The remaining standards in Division 59-6.2 (i.e., vehicle parking design standards, loading standards, and screening standards) are not applicable to this application. Based on this record, the Hearing Examiner finds that the requirements of Division 59-6.2 are inapplicable to the proposed use and that the existing parking is sufficient to accommodate the equestrian facility.

3. Site Landscaping and Screening/Parking Lot Screening and Landscaping

Division 59-6.5 of the Zoning Ordinance sets minimum standards for screening and landscaping the perimeter of a property with a conditional use. Detailed screening requirements are included in §59-6.5.3.C.7 of the Zoning Ordinance. Conditional uses in the R-200 Zone must meet one of two options set forth in that division. Both options require a particular number of shrubs and bushes for every one hundred feet. Option A permits landscaped buffers to be 8-feet wide with a 4-foot wall or fence and mandates the number trees and shrubs that must be planted within the 8-foot wide landscaped strip. Option B does not require a fence, but the buffer must be 12 feet wide, and have a specified number of trees and shrubs for every 100 feet in length.

Conclusion: Staff did not recommend requiring the Applicant to install additional screening because the property, including the area surrounding the barn, is already extensively screened by existing forest. In support of its position, Staff included the following graphic in its report (*Id.* at 11):

Figure 8: Existing forest as screening



Section 59-7.3.1.E.1.b permits the Hearing Examiner to apply the detailed screening requirements in Article 59-6.5 only to the “extent necessary to ensure compatibility” with the surrounding area.

The aerial photographs (on pages 5 and 6 of this Decision) and the graphic shown above demonstrate that existing forest already screens the use and additional plantings are unnecessary. The existing forest is also more compatible with the agricultural character of the neighborhood than formal landscaping. The Hearing Examiner finds that existing forest more than adequately screens the proposed use and that additional landscaping is not needed to ensure compatibility with the surrounding area.

4. Outdoor Lighting

Division 59-6.4 of the Zoning Ordinance contains requirements for new outdoor lighting for conditional uses. These requirements include the following (§59-6.4.4.E):

Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.

Conclusion: Because the Applicant does not propose any new outdoor lighting, the requirements of Division 59-6.4 are not applicable to the use. *See*, §59-6.4.2. Nevertheless, Staff advises that all lights face downward and will not cause light to intrude into neighboring properties. *Id.* at 11.

IV. Conclusion and Decision

As set forth above, the application meets all the applicable standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance.

Based on the foregoing findings and conclusions, the application of Jennifer Freeman (CU 16-15) for a conditional use under Section 59-3.2.4.B. of the Zoning Ordinance to build and operate an equestrian facility at 14975 Sugarland Road, Poolesville, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. The Applicant shall be bound by her testimony and the evidence identified in this Report and Decision.

2. Physical improvements for the equestrian facility are limited to those shown on the Conditional Use Site Plan filed on July 28, 2016 (Exhibit 18(a)).
3. No more than four horses may be kept on the property.
4. All horses on site must belong to the owner(s) of the property.
5. The Applicant must not rent out any of the horses in the equestrian facility.
6. No equestrian events may be held on the property.
7. No identification sign may be placed on the property.
8. The owner of the property must satisfy the state requirements for nutrient management concerning animal waste.
9. This Equestrian Facility Conditional Use approval must be renewed every five years.
10. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Issued this 23rd day of September, 2016.



Lynn A. Robeson
Hearing Examiner

NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record or aggrieved party may file a written request to present oral argument before the Board of Appeals, in writing, within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's report and decision. Any party of record or aggrieved party may, no later than 5 days after a request for oral argument is filed, file a written opposition or request to participate in oral argument.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59-7.3.1.F.1.c.

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
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COPIES TO:

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